

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 88841-001-SF

v

Blue Cross and Blue Shield of Michigan
Respondent

Issued and entered
This 20th day of May 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On March 31, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on April 7, 2008.

As required by Section 2(2) of Act 495, the Commissioner conducts this external review as through the Petitioner were a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

Because the appeal involved medical issues, the Commissioner assigned the case to an independent review organization (IRO), which provided its recommendations to the Commissioner on April 21, 2008.

II

FACTUAL BACKGROUND

The Petitioner's doctor requested pre-authorization for bi-lateral mammoplasty and removal

of excess skin and tissue on her arms. The Petitioner is enrolled for health care coverage through State of Michigan, a self-funded group. The provisions of her coverage are governed by the terms of the PPO State Health Plan's Benefit Guide.

BCBSM approved surgery for the Petitioner's bilateral mammoplasty but denied authorization for the excision of excessive skin and subcutaneous tissue on her arms as not medically necessary. The Petitioner appealed BCBSM's denial of preauthorization of her surgery. After a managerial-level conference on January 8, 2008, BCBSM did not change its decision and issued a final adverse determination dated February 4, 2008.

III ISSUE

Did BCBSM properly deny coverage for the preauthorization of her surgery to exercise excessive skin and subcutaneous tissue on her arms?

IV ANALYSIS

Petitioner's Argument

The Petitioner says that despite continued supporting documentation from several physicians indicating that the surgical procedure is medically necessary to alleviate the problems associated with excessive hanging skin, BCBSM has continued to deny authorization.

The Petitioner argues that her Benefit Guide indicates that a procedure is medically necessary if the service is generally accepted as necessary and appropriate for the patient's condition, considering the symptoms. It must also be reasonably expected to improve the patient's condition or level of functioning. The Petitioner believes her surgery meets all these requirements and is a covered benefit. She argues BCBSM should be required to pay for this care.

BCBSM's Argument

Page 29 of the Benefit Guide includes these provisions:

Unless otherwise specified, a service must be medically necessary in order to be covered by the State Health Plan PPO.

* * *

Medical necessity for physician services is determined by physicians acting for their respective provider types or medical specialty and is based on criteria and guidelines developed by physicians and professional providers. It requires that:

- The covered service is generally accepted as necessary and appropriate for the patient's condition, considering the symptoms. The covered service is consistent with the diagnosis.
- The covered service is essential or relevant to the evaluation or treatment of the disease, injury, condition or illness. It is not mainly for the convenience of the members or physicians.
- The covered service is reasonably expected to improve the patient's condition or level of functioning. In the case of diagnostic testing, the results are used in the diagnosis and management of the patient's care.

On page 31, the Benefit Guide states:

Cosmetic or reconstructive surgery is covered only for the correction of the following:

- Birth defects
- Conditions resulting from accidental injuries
- Deformities resulting from certain surgeries, such as breast reconstruction following mastectomies

In the Petitioner's case, her surgery for excision of excessive skin and subcutaneous tissue for the hanging skin on her arms is the result of weight loss due to gastric bypass surgery in 2002 and is not a payable benefit because it is considered cosmetic surgery. BCBSM believes that it acted correctly when it denied pre-authorization for this surgery.

Commissioner's Review

The Commissioner reviewed the Certificate, the arguments and documents presented by the parties, and the IRO report. BCBSM argued that the Petitioner's surgery to remove skin from her arms is cosmetic in nature and not medically necessary.

The question of whether it was medically necessary for the Petitioner to have this surgery was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer in this matter is a physician board certified in plastic surgery, holds an academic appointment and has been in active practice for more than ten years.

The IRO reviewer found that the photographs included in the case file do not show any inflammation, restriction of range of motion, skin contractures, or loss of function. There is excess skin of the arms documented in these photographs, which is consistent with the aging process. There was no documentation of conservative treatment of rashes in the medical records. There is an April 20, 2006 medical record documenting a complaint of excessive sweating and treatment with drysol. The IRO medical reviewer indicated that hyperhidrosis is not treated with excision of redundant skin and soft tissue.

The IRO medical expert concluded that excision of excessive skin that the Petitioner underwent on December 12, 2007 was not medically necessary for treatment of her condition.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the Petitioner's surgery to excise excess skin and subcutaneous tissue was not medically necessary. Based on this conclusion, the Commissioner finds that this surgery is not a covered benefit under the benefit.

V ORDER

Respondent BCBSM's February 4, 2008, final adverse determination is upheld. BCBSM is not required to pre-authorize or cover the Petitioner's surgery to remove excess skin from her arms.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross

Commissioner